

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VS.

AND

Docket No. 104,209

ORDER

Respondent and insurance carrier appeal from an Award entered by Administrative Law Judge George R. Robertson on May 5, 1995. The Appeals Board heard oral argument on July 6, 1995.

APPEARANCES

Claimant appeared by and through his attorney John M. Ostrowski of Topeka, Kansas. The respondent and insurance carrier appeared by and through their attorney Gary R. Terrill of Overland Park, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board adopts the stipulations listed in the Award.

ISSUES

This claim came before the Administrative Law Judge on claimant's application for post-award medical benefits. The Administrative Law Judge awarded up to a maximum of \$300.00 per year in chiropractic care. Respondent appeals from that decision. The Administrative Law Judge also awarded claimant attorney's fees. Claimant appeals the award of attorney's fees, contending that the amount should be higher.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the award of medical benefits and the award of attorney's fees should be affirmed. An Award was originally entered in this case in October 1984. The Award provided for continued chiropractic treatment to claimant with Dr. Pennington for a period not to exceed six (6) months. By agreed upon orders, the respondent thereafter continued to provide chiropractic treatment. It appears from the record that claimant took advantage of the authorization only occasionally as needed to relieve symptoms from flare-up of his back injury. During the twenty-six (26) months preceding the case for review and modification claimant had nine (9) treatments for a total of \$225.00.

When respondent declined to provide further chiropractic treatment, claimant made the present application. Claimant presented testimony of Dr. Pennington, the treating chiropractor. Respondent presented the testimony of Dr. Tillema. Dr. Tillema indicates claimant might benefit from conservative treatments such as anti-inflammatory medicine or heat treatment. He does not recommend chiropractic care. Claimant testifies that the chiropractic care continues to relieve symptoms on an occasional basis when his back condition worsens. Dr. Pennington supported claimant's testimony. He testified that claimant receives relief from the symptoms by the treatment administered. From review of the record, the Board agrees with the finding by the Administrative Law Judge that the additional medical treatment would be a benefit to the claimant and, accordingly, affirms the award.

Claimant made application for attorney's fees pursuant to K.S.A. 44-536. The Administrative Law Judge awarded fees in the amount of \$2,551.50. Claimant's counsel asks that that Award be increased. The Appeals Board, however, finds the Award to be reasonable under the circumstances. Claimant's request for an increase includes a request for attorney's fees for time spent prosecuting this appeal. In keeping with the Appeals Board's previous holdings that it only reviews findings by the Administrative Law Judge, the Appeals Board finds that application for attorney's fees for time spent prosecuting this appeal should be addressed in the first instance to the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated May 5, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: John M. Ostrowski, Topeka, Kansas
Gary R. Terrill, Overland Park, Kansas
George R. Robertson, Administrative Law Judge
David A. Shufelt, Acting Director